



1  
2 **FINDINGS OF FACT**

3 **I**

4 On June 30, 1992, Richard J. Gribbon, Air Pollution Control Inspector for PSAPCA  
5 returned a call to a telephone message left by City of Auburn Fire Dept., Inspector Dave  
6 Smith

7 **II**

8 Gribbon was advised that the Fire Department had responded to a possible unlawful  
9 outdoor fire at 27905 84th Avenue S, Kent, King County, State of Washington, on June 12,  
10 1992

11 **III**

12 Lt. Stan Laatsch arrived at the scene, and found a person who identified himself as  
13 Stanley Watson, burning garbage in a fifty-five (55) gallon burn barrel. Watson told Laatsch  
14 that he was cooking. Watson was then evasive to any more questions that Laatsch asked him.  
15 walked into his residence and closed the door.

16 **IV**

17 The odor of the burn was strong and disgusting, and the fire department  
18 extinguished it.

19 **V**

20 Residents in the immediate area told Laatsch that Watson continued to burn even  
21 though they had asked him to stop because of the smell.

22 **VI**

23 Gribbon reviewed the Fire Department's Report and recognized the name and address  
24 as one that PSAPCA had cited about six weeks earlier.

VII

A Notice of Violation and Civil Penalty was issued for the previous May 2, 1992, incident to Stanley Watson AKA David Adams, a tenant at 27905 84th Avenue S , Kent, WA, and to C J and Shirley Hauge, 8410 S. 280th Street, Kent, WA, property owners

No appeal of this violation and penalty was filed. However, C. J Hauge responded to PSAPCA on May 29, 1992, stating "I have talked to my tenant, Stanley Watson I have told him to do no burning without a permit I don't know what else I can do "

VIII

The May 2, 1992 Notice carried a clause for Corrective Action, which read "Cease and Desist from causing and allowing outdoor fires that are not in compliance with PSAPCA's Regulation I, Article 8 "

IX

Based upon Auburn's Fire Department's documented response and incident report pertaining to the June 12, 1992 incident coupled with the past history of unlawful burning at the site, PSAPCA issued Notice of Violation No. 28668 dated July 2, 1992, to Stanley Watson and property owners C. J. and Shirley Hauge, citing PSAPCA's Regulation I, Sec 8 02(b) and 8 02(c)

X

PSAPCA followed with a Notice and Order of Civil Penalty No 7657 dated September 25, 1992, in the amount of ten-thousand dollars (\$10,000) for the above alleged violation

XI

The description of the violation read "Caused or allowed an unlawful fire containing garbage . "

1  
2 XII

3 C. J. Hauge filed a timely appeal of Civil Penalty No. 7657 with the Pollution Control  
4 Hearings Board on October 20, 1992.

5 XIII

6 Hauge resides approximately one hundred feet from the site across the street

7 XIV

8 Hauge owns low income houses and some businesses, in which he has seventeen  
9 tenants on approximately three acres of land. He receives three-hundred dollars (\$300) a  
10 month for the leased unit located at 27905 84th Avenue S.

11 XV

12 Hauge provides for garbage pick up, and there is a dumpster located about fifty feet  
13 from the unit Watson rented

14 XVI

15 Hauge contends that he is not responsible for his tenant's fire. He signs a contract with  
16 the tenants that they are not to be involved in drugs or other illegal procedures, as well as they  
17 are to abide by city, county and state law

18 XVII

19 When Hauge received the May notice, he told Watson to quit burning or he would evict  
20 him

21 XVIII

22 Hauge told Watson it would be better if he left. Watson chose to leave in the middle of  
23 the night, owing rent, and Hauge does not know where he is

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

XIX

There had been previous complaints from other tenants about Watson burning, and the Kent Fire Department had responded to the other complaints.

XX

Hauge wrote four short letters or notes to PSAPCA, which were received on May 29, 1992, July 20, 1992, October 20, 1992 and November 24, 1992. (See exhibits R9-(1) through R9-(4).

The contents of the letters included statements that Hauge had talked to Watson about illegal burning, and that he (Hauge) had no control over his lessee's actions

XXI

The area of the alleged fire is designated a "No burning zone" by PSAPCA because it is an area near the I-5 freeway corridor, where ambient air quality standards have been exceeded for pollutants, and PSAPCA is attempting to reduce the volume in the contaminated zone

XXII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such  
From these Findings of Fact, the Board issues these:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over this issue and parties. Chapter 70 94 and 43.21B RCW.

II

The Board takes official notice of PSAPCA's Regulation I which is on file with the Environmental Hearings Office.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

III

PSAPCA has the initial burden of proof in this appeal of a civil penalty

IV

There are two issues to be resolved in this appeal.

- 1) Whether C. J Hauge controlled the property in which the violation occurred, and
- 2) Whether the amount of civil penalty issued is reasonable.

V

PSAPCA's Section 8.02(b) provides that

It shall be unlawful for any person to cause or allow any outdoor fire

Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors; or

VI

PSAPCA's Section 8 02(c) allows open burning as follows.

Other than the following types

- (1) Fires for instruction in the method of fighting fires (except forest fires), provided prior written approval has been issued by the Control Officer
- (2) Fires associated with agricultural activities for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, provided written confirmation has been furnished by a designated county extension agent or agricultural specialist designated by the Cooperative Extension Service that burning is the best management practice, and prior written approval has been issued by the Control Officer,
- (3) Fires for abating a forest fire hazard, to prevent a hazard, for instruction of public officials in methods of forest fire fighting, any silvicultural operation to improve forest lands, and silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and

1 other wildlife areas, provided prior written approval has been issued by the  
2 Washington Department of Natural Resources.

- 3 (4) Fires no larger than four feet in diameter and three feet in height consistent of  
4 leaves, chippings, prunings, and other yard and gardening refuse originating on  
5 lands immediately adjacent and in close proximity to a human dwelling and  
6 burned on such lands by the property owner or his or her designee, provided a  
7 permit has been issued by a fire protection agency, county, or conservation  
8 district.
- 9 (5) Fires consisting of residue of a natural character such as trees, stumps,  
10 shrubbery or other natural vegetation arising from land clearing projects,  
11 provided a permit has been issued by a fire protection agency, county, or  
12 conservation district.
- 13 (6) Fires consisting solely of charcoal, propane, natural gas, or wood used solely  
14 for the preparation of food,
- 15 (7) Fires no longer than four feet in diameter, and three feet in height for  
16 campfires at designated federal, state, county or city parks and recreation  
17 areas.
- 18 (8) Fires for Indian ceremonies or for the sending of smoke signals if part of a  
19 religious ritual

## 20 VII

21 The June 12, 1992 incident of burning garbage in a fifty-five gallon drum is prohibited  
22 by Section 8.02(b) and not allowed in Section 8.02(c)(1-8) of PSAPCA's Regulation I

## 23 VIII

24 Under PSAPCA's Section 8.04(a) General Conditions, it states

25 It shall be prima facie evidence that the person who owns or  
26 controls property on which an outdoor fire occurs has caused or  
27 allowed said outdoor fire

## IX

Mr. Hauge does not contend that the violation did not occur. He simply  
argues that he is not responsible.

1  
2 X

3 Hauge, the owner of the property, was cited along with Watson for a previous May,  
4 1992, fire incident. Hauge did not appeal the Notice of Civil Penalty pertaining to the May  
5 fire, nor did he try to mitigate the amount with PSAPCA based on the fact that he was not in  
6 control. He only wrote a short note to PSAPCA saying that he talked to Watson (Finding of  
7 Fact VII)

8 Furthermore, he took no action to remove the burn barrel or the tenant from his rented  
9 property.

10 Therefore, the Board concludes that landowner Hauge was put on notice of illegal  
11 burning on his property at that time.

12 XI

13 The June 12, 1992 fire was an illegal burn under PSAPCA's Section 8.02(b) and  
14 Section 8.02(c), Regulation I.

15 The issue here is whether Hauge controlled the property, under Section 8.04(a) at the  
16 time of the violation.

17 The Board concludes that he did.

18 XII

19 Mr. Hauge controlled the property in question at the time of the fire, in that he selected  
20 the tenant, he collected rent, he did nothing to remove the burn barrel or stop Watson from  
21 burning in the burn barrel once he knew of the first violation. He simply claims he had no  
22 control.

23 XIII

24 The Clean Air Act is a strict liability statute. Landowners are prima facie responsible  
25 for the unlawful fires on their property. Landowners can be absolved of responsibility by

26 FINAL FINDINGS OF FACT.  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 92-190



1 showing that neither their actions nor their ownership are so connected with the unlawful event  
2 as to have "cause, permitted, suffered or allowed it "

3  
4 In this case however, Hauge created a substantial risk that an illegal fire would occur  
5 by not taking any corrective action following the May Notice of Civil Penalty and clause for  
6 Corrective Action (Finding VIII).

7 Therefore, the Board concludes that Hauge was in control of the property and allowed  
8 the fire to occur.

9  
10 XIV

11 RCW 70.94 431 is mandatory. When there is a violation, there shall be a penalty

12 XV

13 The second issue, the reasonableness of the ten thousand dollar (\$10,000) penalty was  
14 not argued by PSAPCA. However, the Board considers the following:

- 15 1) the size of the illegal fire;  
16 2) the fact of whether it was contained,  
17 3) the fact that the landowner provided free garbage pick up for lessees,  
18 4) the number of previous violations; and  
19 5) the Board's previous rulings that the primary purpose of a penalty is not to punish,  
20 but rather to prevent further violations

21 XVI

22 Based on the foregoing the Board should affirm the violation and civil penalty, but  
23 reduce the amount

XVII

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such  
From the foregoing, the Board issues this:

1  
2 ORDER

3 The Notice and Order of Civil Penalty, ten thousand dollars (\$10,000) issued by  
4 PSAPCA is hereby AFFIRMED with \$8,000 suspended provided that there are no further  
5 violations for a period of two years.

6 DONE this 2nd day of March, 1993.

7 POLLUTION CONTROL HEARINGS BOARD

8  
9 Annette S. McGee  
10 ANNETTE S. MCGEE, Presiding

11  
12 Harold S. Zimmerman  
13 HAROLD. S. ZIMMERMAN, Chairman

14  
15 Robert V. Jensen  
16 ROBERT V. JENSEN, Attorney Member

17 P92-190F  
18  
19  
20  
21  
22  
23  
24  
25  
26